

## ***SECTION 5: CONSTRUCTION PLANS & PROCEDURES***

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### ***SECTION 5.01 CONSTRUCTION PLANS***

- (a) **Purpose.** To require that required public improvements be installed to serve a development in accordance with all the Subdivision Ordinance standards.
- (b) **Submitting Plans.** Plans shall be submitted in accordance with Engineering Services requirements, as provided in the Development Application Handbook. Incomplete plans shall not be accepted and such plans shall be returned to the applicant.
- (c) **Responsible Official and Decision.** The Director of Engineering Services shall be the responsible official for review and approval of Construction Plans. The Director of Engineering Services shall also be the initial decision-maker for Construction Plans. In this capacity, therefore, the Director of Engineering Services shall approve, approve subject to modifications, or deny the Construction Plans.
- (d) **Approval Required & Timing of Construction.** Construction Plans must be approved in accordance with this Section prior to the approval and/or recordation of the Final Plat, unless otherwise stated within the Subdivision Ordinance.
- (e) **Criteria for Approval.** The Director of Engineering Services shall approve Construction Plans if:
  - (1) The plans are consistent with the approved Preliminary Plat, or the proposed Final Plat; and
  - (2) The plans conform to the subject property's zoning and Planned Development standards (including zoning design standards), and to the standards for adequate public facilities, contained in this Subdivision Ordinance and all other applicable municipal codes.
- (f) **Effect.** Approval of Construction Plans authorizes the applicant to schedule a Pre-Construction Meeting in accordance with Section 5.02 and apply for Construction Release in accordance with Section 5.01(i).
- (g) **Expiration.** The approval of Construction Plans shall remain in effect for a period of one (1) year from the date of approval, or for the duration of construction of the project, provided that progress toward completion of the project continues to be demonstrated, unless the Plans are extended in accordance with Section 5.01(h).



(h) **Extension.** Construction Plans may be extended for a period of six (6) additional months beyond the expiration date. A request must be made in writing to Engineering Services for such extension prior to expiration of the plans, and shall include reasons why the plans should be extended.

(1) Decision by the Director of Engineering Services.

- a. The Director of Engineering Services will review the extension request, and shall approve, approve with conditions, or deny the extension request within thirty (30) calendar days following the official filing date.
- b. Should the Director of Engineering Services fail to act on an extension request within thirty (30) calendar days, the extension shall be deemed to be approved.

(2) Consideration. The Director of Engineering Services shall extend Construction Plans approval for a period of six (6) additional months beyond the Plans' expiration date if:

- a. A Final Plat has been submitted, approved or filed of record for any portion of the property shown on the Construction Plans;
- b. The Construction Plans comply with new ordinances that impact the health, safety and general welfare of the community;
- c. Demonstrable forward progress has been made to proceed with construction or required improvements; and
- d. An Improvement Agreement (Section 5.04), if applicable, is still valid and in full effect.

(3) Conditions. In granting an extension, the Director of Engineering Services may impose such conditions as are needed to ensure that the land will be developed in a timely fashion and that the public interest is served. Any extension may be predicated upon compliance with new development regulations and/or the applicant waiving any vested rights.

(4) Total Extension. A second, six (6) month extension may be requested using the same process outlined above.

(i) **Construction Release.** Upon approval of the Preliminary Plat and the Construction Plans, receipt of all documentation (e.g., insurance information, bonds, etc.) and fees required by Engineering Services, and after the Pre-Construction Meeting with City staff (Section 5.02), the Director of Engineering Services shall release the plans for construction if all City requirements pertaining to construction have been met. The Construction Release shall remain in effect for a period of one (1) year from the date of issuance, or for the duration of construction of the project, provided that progress toward completion of the project continues to be demonstrated. Expiration, and possible extension, of the Construction Release shall be the same as for the Construction Plans (see Sections 5.01(g) and 5.01(h)).

### **SECTION 5.02    PRE-CONSTRUCTION MEETING**

- (a) **Requirement.** The applicant(s) shall attend a Pre-Construction Meeting with Engineering Services following the approval of Construction Plans and prior to commencement of any construction on the property.
- (b) **Purpose.** The purpose of the Pre-Construction Meeting is to discuss administrative, communication, and operating procedures for project construction prior to Construction Release (refer to Section 5.01(i)) or issuance of a Building Permit. A list of typical inspection items, procedures and acceptance criteria for items in public right-of-way and easements will also be furnished to the applicant.
- (c) **Notice.** The applicant shall receive written notice from the Director of Engineering Services that Construction Plans have been approved and that the project is eligible for a Pre-Construction Meeting.
- (d) **Effect.** Following the Pre-Construction Meeting and upon approval of the Construction Plans and full compliance with all pre-construction requirements, the Director of Engineering Services shall authorize Construction Release (see Section 5.01(i)), allowing the applicant to commence with construction of the project. The applicant may also be issued a Building Permit, if appropriate, provided that a Building Permit application has been submitted and approved and all other Building Permit requirements have also been met.

### **SECTION 5.03    TIMING OF PUBLIC IMPROVEMENTS**

- (a) **Completion Prior to Final Plat Approval & Recordation.** Completion of all required public improvements, in accordance with the approved Preliminary Plat and the approved Construction Plans, shall occur prior to Final Plat approval and recordation. A Final Plat shall not be accepted for filing, nor shall it be considered for approval, prior to completion of such improvements except as provided in Section 5.03(b).
- (b) **Completion After Final Plat Approval & Recordation.** The Director of Engineering Services, upon written request by the applicant, may allow construction of public improvements after Final Plat approval and recordation. Such postponement shall be conditioned on execution of an Improvement Agreement and provision of security, in accordance with Section 5.04. It shall be at the Director's discretion to determine whether postponing construction of public improvements until after Final Plat approval and recordation is appropriate, and therefore, whether financial guarantee is acceptable through an Improvement Agreement.
- (c) **Deferral of Obligation.** The Director of Engineering Services may defer the developer's obligation to dedicate rights-of-way for, or to construct, public improvements to serve a new development upon execution of an Improvement Agreement and upon provision of adequate security (see Section 5.04).



- (d) **Phased Development.** If the development is being platted and constructed in phases, improvements shall be completed as platted areas are approved and phases are constructed. Also refer to Section 4.02(i) for details regarding phased development and Preliminary Plat validity.
- (e) **Easements for Utility Providers.** The applicant is responsible for contacting all utility providers prior to beginning construction, and for securing all necessary easements for same prior to Final Plat approval and recordation. The applicant's engineer shall provide the Director of Engineering Services with written certification that all necessary easements are secured for the various utility providers, and such easements shall be shown on the Final Plat with the recording information for each.
- (f) **Off-Site Easements.** All necessary off-site easements required for installation of required off-site public improvements to serve the development shall be acquired by the applicant prior to the Pre-Construction Meeting (see Section 5.02), or prior to approval and recordation of the Final Plat, whichever occurs first. Off-site easements shall be conveyed and recorded at the County by an instrument approved by the City. If the property on which the off-site easement is required has been platted, a replat is required to dedicate the easement.

#### **SECTION 5.04 IMPROVEMENT AGREEMENTS AND SECURITY FOR COMPLETION**

- (a) **Improvement Agreement and Security for Completion.** When any of the required public improvements will be postponed and constructed after Final Plat approval and recordation, the Final Plat shall not be accepted for filing, nor shall it be approved, unless and until the applicant enters into an Improvement Agreement by which the applicant:
  - (1) Will complete the improvements;
  - (2) Warrants the improvements for a period of two (2) years following final acceptance by the City;
  - (3) Provide a maintenance bond in the amount of one hundred and ten percent (110%) of the costs of the improvements for such period;
  - (4) Provides provisions for securing the obligations of the agreement consistent with Section 5.04(e); and
  - (5) Outlines other terms and conditions as are agreed to by the applicant and the City, or as may be required by this Subdivision Ordinance.
- (b) **Agreement to Run with the Land.** The Improvement Agreement shall provide that the covenants and other items of agreement contained therein shall run with the land and shall bind all successors, heirs and assignees of the applicant. All existing owners shall be required to execute the agreement or provide written consent to the covenants and other items contained in the agreement.
- (c) **Decision by the Director of Engineering Services.** The Director of Engineering Services shall review the Improvement Agreement, and shall approve it, approve it with conditions, or deny it. The agreement shall also be subject to review by the City Attorney prior to any approval by the Director

of Engineering Services, and the applicant shall reimburse the City for all related legal costs for review. This reimbursement shall be paid in full prior to filing of the Final Plat.

- (d) **Appeal of Decision.** The applicant may appeal the Director of Engineering Services' decision on the Improvement Agreement to the City Council by submitting written notice of appeal to the Director of Engineering Services within fourteen (14) calendar days following the date of such decision. The City Council shall hear and decide the appeal within thirty (30) calendar days following receipt of the notice of appeal. The City Council may only overturn the Director of Engineering Services' decision upon a favorable vote of at least four (4) of the Council's voting members, and the Council's decision shall be final.

(e) **Security for Completion of Improvements.**

- (1) Type of Security. When any of the required public improvements will be constructed after approval and recordation of the Final Plat, the applicant shall guarantee proper construction of such postponed improvements, in accordance with the City's design standards and with this Subdivision Ordinance, by a bond executed by a surety company holding a license to do business in the State of Texas, and acceptable to the City, on the form provided by the City. The performance bond shall be approved as to form by the City Attorney;
- (2) Estimated Cost & Security Approval. Security shall be issued in the amount of one hundred and ten percent (110%) of the cost to construct and complete all required public improvements to the City's standards as estimated by the applicant's professional engineer, and as approved by the Director of Engineering Services. Security shall be subject to the review and approval of the City Attorney. The applicant shall reimburse the City for all related legal costs for review (this reimbursement shall be paid in full prior to filing of the Final Plat).
- (3) Security for Construction in Extraterritorial Jurisdiction (ETJ). Where all or some portion of the proposed development is located in the City's ETJ, the security shall be in a form and shall contain such terms as are consistent with the City's interlocal agreements with Collin and Denton Counties (as applicable) under Texas Local Government Code, Chapter 242. In cases where the requirements governing the form and terms of the security are defined in such an agreement, they will supersede any conflicting provisions within this Subdivision Ordinance.

(f) **Escrow Policies and Procedures.**

- (1) Request for Escrow. The City may require or the developer may petition the City to defer required improvements in exchange for a deposit of escrow. An example may include a timing issue due to pending street improvements by another agency such as TxDOT. The Director of Engineering Services may require studies and other information to support the developer's request to escrow.
- (2) Escrow Deposit With the City. When the Director of Engineering Services requires or agrees to accept escrow deposits, the developer shall deposit in escrow with the City an amount equal to one hundred and ten percent (110%) of the total "turnkey" costs including, but not limited to, the design, permitting, acceptance and inflation costs related to the



improvement(s). The Director of Engineering Services shall review and approve the amount, which shall be approved and paid prior to recordation of the Final Plat.

- (3) City Usage of Escrowed Funds. The City may also use the escrowed funds in participation with another entity (such as TxDOT, Collin or Denton County, etc.) to jointly construct the public improvement(s).
- (4) Termination of Escrow. Escrows, or portions of escrowed amounts, which remain unused after a period of ten (10) years following the date of such payment shall, upon written request, be returned to the developer. Such return of escrowed funds does not remove any obligations of the developer for construction of the required improvement(s).
- (5) Refund. If all or a portion of a street or other type of public improvement for which escrow is deposited is constructed by a party other than the City, the remaining unused escrowed funds, upon written request, be refunded to the developer after completion and City acceptance of the street or public improvement.
- (6) Interest on Escrowed Funds. When escrowed funds are returned or refunded to the escrowing developer, the City shall retain all of the interest accrued by the funds.
- (7) Escrow Fee Agreement. The Director of Engineering Services, at his/her discretion, may require an escrow fee agreement be executed.

#### **SECTION 5.05 INSPECTION, MAINTENANCE & ACCEPTANCE OF PUBLIC IMPROVEMENTS**

##### **(a) Inspections.**

- (1) The Director of Engineering Services shall inspect the construction of improvements while in progress, as well as upon completion. The applicant, or his contractor, shall maintain contact with the Director of Engineering Services during construction of improvements.
- (2) Construction shall be in accordance with the approved Construction Plans. Any significant change in design required during construction shall be made by the applicant's engineer, and shall be subject to approval by the Director of Engineering Services.
- (3) If the Director of Engineering Services finds, upon inspection, that any of the required public improvements have not been constructed properly and in accordance with the approved Construction Plans, the applicant shall be responsible for completing and/or correcting the public improvements to bring such into compliance.

##### **(b) Maintenance During Construction.** The applicant shall maintain all required public improvements during construction of the development.

##### **(c) Submission of Record Drawings.** The City shall accept required public improvements when the applicant's engineer has certified to the Director of Engineering Services, through submission of detailed "record" drawings of the project and filed copies of any off-site easements, unless otherwise noted within the Subdivision Ordinance, that the public improvements have been built in accordance with the approved Construction Plans. The City shall not accept improvements until the Final Plat is approved by the City and recorded at the County. Each record drawing sheet shall show all changes made in the plans during construction, and on each sheet, there shall be a



"record" stamp bearing the signature of the engineer and date. Detailed requirements for such drawings are available in Engineering Services.

**(d) Acceptance or Rejection of Improvements by Director of Engineering Services.**

- (1) Responsible Official. The Director of Engineering Services shall be responsible for inspecting all required public improvements shown in the Construction Plans, and for accepting completed subdivision improvements intended for dedication to the City.
- (2) Final Inspection. After completion of all improvements, franchise utilities, grading, and erosion control, the Director of Engineering Services, the Director of Public Works, the Director of Parks & Recreation, and other designated representatives (as applicable) will perform a final inspection before recommending acceptance of the improvements.
- (3) Letter of Final Acceptance. If all improvements are completed, inspected, tested (if applicable), and determined by the City to be in conformance with this Subdivision Ordinance and with the City's design standards, then the Director of Engineering Services shall issue a Letter of Final Acceptance to the applicant, thereby notifying the applicant of the City's acceptance.
- (4) Meaning of Acceptance. Acceptance of the improvements shall mean that the applicant has transferred all rights to all the public improvements to the City for title, use and maintenance.
- (5) Rejection. The Director of Engineering Services shall reject those improvements that fail to comply with the City's standards and specifications. The City shall enforce the guarantee provided by agreement(s).

(e) **Disclaimer.** Approval of a Preliminary Plat or Final Plat by the Commission, or Construction Plans by the Director of Engineering Services, shall not constitute acceptance of any of the public improvements required to serve the subdivision or development. No public improvements shall be accepted for dedication by the City except in accordance with this Section.

(f) **Acceptance of Improvements for Land in Extraterritorial Jurisdiction (ETJ).** Where the improvements to be constructed under an Improvement Agreement are located within the City's ETJ and are to be dedicated to a County, the Director of Engineering Services shall inform the County that the public improvements have been constructed in accordance with approved Construction Plans, and are ready for acceptance by the County.

(g) **Maintenance Bond Following Acceptance.** The applicant shall furnish to the Director of Engineering Services a sufficient maintenance bond with a reputable and solvent corporate surety registered with the State of Texas, in favor of the City, to indemnify the City against any repairs. The bond shall be in effect for two (2) years from the date of final acceptance of the entire project. The bond, which is a part of the requirements for final acceptance, shall be a minimum of one hundred and ten percent (110%) of the value of the work constructed. Final acceptance shall be withheld until said maintenance bond is furnished to the City in a form acceptable by the City Attorney. Once the maintenance bond has been examined and approved by the City Attorney, the City Attorney shall certify the bond is valid and enforceable as provided by law prior to recommending acceptance by the Director of Engineering Services. The applicant shall reimburse



the City for all related legal costs for review (this reimbursement shall be paid in full prior to filing of the Final Plat).